

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

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IN THE MATTER OF:

CEDAR CHEMICAL CORPORATION,  
WEST HELENA, ARKANSAS

NO. LIS 91- 118

(ARD990660649)

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CONSENT ADMINISTRATIVE ORDER

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JURISDICTION

1. This Consent Administrative Order is entered pursuant to the authority of the Arkansas Remedial Action Trust Fund Act ("ARATFA"), ACA §8-7-508, as currently amended; the Arkansas Hazardous Waste Management Act ("AHWMA"), ACA §8-7-214; and the Arkansas Hazardous Waste Management Code (the "Code"). All terms contained within this document shall have the definitions as found in the above-referenced laws, unless the context plainly indicates otherwise.

2. The issues herein have been settled by the agreement of Cedar Chemical Corporation (the "Respondent") and the Director of the Arkansas Department of Pollution Control & Ecology ("ADPC&E") without prejudice to the right of Respondent to contest the findings of fact or conclusions of law or determinations made herein, subject to the Respondent's agreement not to contest ADPC&E's subject matter jurisdiction with respect to the Consent Administrative Order, and without prejudice to Respondent's right to seek contribution from other liable parties pursuant to ARATFA §8-7-520.

STATEMENT OF PURPOSE

3. By entering into this Consent Administrative Order, the mutual objectives of ADPC&E and the Respondent are:

a. To remove buried drums discovered by the Respondent on its chemical manufacturing plant located on a 48-acre site on Highway 242 in West Helena, Arkansas (hereinafter the "Site") and to carry out a closure of said burial area in accordance with a Removal Work Plan dated June 1990, heretofore submitted by Respondent to and approved by, ADPC&E; and

b. To prepare and submit to ADPC&E a preliminary report describing the current conditions at the Site; also, to develop and implement a facility investigation work plan including reports of investigation analysis, laboratory and bench scale studies and periodic progress reports, and a corrective measures study, all in accordance with the Scope of Work Documents (the "Scope of Work") attached hereto as Exhibit A. The ultimate purpose of the tasks described in the Scope of Work is to determine the nature and extent of contamination on the Site and to determine the potential for the release or threat of release of any hazardous substances from the Site so that if deemed necessary by ADPC&E, appropriate remedial alternatives can be developed.

#### PARTIES

4. This Consent Administrative Order shall be binding upon ADPC&E and upon the Respondent named herein and any subsequent respondent who shall become signatory hereto, their successors and assigns, and shall control the work of all persons, agents, contractors and technical consultants acting under or for ADPC&E or the Respondent in carrying out the actions required by this Consent Administrative Order.

5. Respondent shall provide a copy of this Consent Administrative Order to each contractor, subcontractor, laboratory and technical consultant retained by it to conduct any portion of the work performed pursuant to this Consent Administrative Order prior to said contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted under this Consent Administrative Order.

6. Any contract entered into by the Respondent for the purpose of carrying out any actions required by this Consent Administrative Order shall incorporate the requirements of this Consent Administrative Order pertaining to the work to be performed or services or materials to be supplied.

#### FINDINGS OF FACT

7. Based on available information regarding the Site, including the investigations and reports heretofore carried out and submitted by Respondent to ADPC&E pursuant to the requirements of a Consent Administrative Order heretofore entered into between the Respondent and ADPC&E in LIS 86-027 (the "Previous CAO") (ADPC&E having specifically found that the Respondent has fully complied with the provisions of the Previous CAO), ADPC&E makes the following findings of fact:

a. The Respondent is a Delaware corporation duly qualified to do business in the State of Arkansas. The Respondent assumed management responsibility for and control of the Site on December 16, 1985, and acquired ownership of the Site thereafter on February 28, 1986.

b. From the early 1970's until Respondent acquired control and ownership of the Site in 1986, the Site was owned and/or operated by a succession of other companies.

c. The Site consists of 48 acres located in the Helena-West Helena Industrial Park located on Highway 242 south of West Helena, Arkansas. Active operations are carried out on about twenty acres on the Site.

d. The first manufacturing unit on the Site was constructed by a former owner in 1970-1971 for the production of propanil, a rice herbicide. Subsequent manufacturing units were constructed and operated by former owners for the production of dinoseb, and other agricultural and industrial chemicals.

e. Currently, Respondent uses the Site to manufacture propanil and dichloroaniline which it markets under its own labels, and for the manufacture of various other agricultural and industrial products which Respondent produces under custom manufacturing contracts with its customers. A new office administrative building was recently constructed on the Site. Respondent currently employs approximately 125 persons at the Site.

f. Data and reports submitted by Respondent pursuant to the groundwater monitoring plan implemented in accordance with the Previous CAO have raised areas of concern which ADPC&E deems to merit additional investigation to determine the source and extent of contamination of ground water on the Site for the purpose of developing any appropriate remedial alternatives deemed necessary.

g. In addition, in the course of constructing a stormwater drainage line in the spring of 1990, employees of Respondent discovered a drum burial area on the Site is believed to have been installed by a former operator of the site. The extent of the burial area was delineated and characterized in accordance with a site characterization report heretofore submitted by Respondent to ADPC&E. Thereafter, a Removal Plan dated June 1990 (the "Removal Plan") was submitted by the Respondent to, and approved by, ADPC&E.

### CONCLUSIONS OF LAW

8. Based upon the foregoing findings of fact, the Director, ADPC&E makes the following conclusions of law which are neither an admission by, binding upon or conclusive as to the Respondent except as provided herein:

a. Respondent is a "person liable for the site" as that term is used in ACA §8-7-508.

b. The Site as described herein is a "hazardous substance site" as that term is used in ACA §8-7-503.

### DETERMINATIONS

9. Based upon the foregoing findings of fact and conclusions of law, the Director, ADPC&E, has determined that:

a. There is a threat of release of a hazardous substance at and or from the Site.

b. It is necessary that the drums located in the drum burial area identified in the Removal Plan referred to in Paragraph 7.g. be removed from the Site and properly disposed of in a manner consistent with the Removal Plan referred to hereinabove, and that Respondent expand the investigation of the nature and extent of contamination of soils and groundwater at the Site which it initiated in accordance with the Previous CAO.

c. The actions agreed upon under the terms of this Consent Administrative Order are in the public interest, are consistent with the National Oil & Hazardous Substances Contingency Plan, 40 C.F.R. §Part 300, and are necessary to protect the public, health, welfare and the environment.

### ORDER

10. IT IS THEREFORE AGREED AND ORDERED by consent of Respondent and ADPC&E, as follows:

#### Interim Measures

a. As an interim measure to achieve the purposes of this Consent Administrative Order, the Respondent shall, not later than sixty (60) days following the effective date of this Consent Administrative Order, retain a qualified contractor or contractors to implement the Removal Plan referred to in Paragraph 7.G. hereof for the purpose of removing and properly

disposing of the buried drums previously discovered on the Site, as aforesaid, and closing the said burial area in accordance with the aforesaid Removal Plan. Respondent shall cause the Removal Plan to be implemented beginning not later than ninety (90) days following the effective date hereof. The Respondent shall cause ADPC&E to be notified at least five (5) days prior to initiation of the drum removal activities hereunder.

b. Within sixty (60) days after completion of the Removal Plan, the Respondent shall submit to ADPC&E a detailed written report describing the activities undertaken to complete the Removal Plan, including all necessary and appropriate certifications and supporting information which is reasonably necessary for ADPC&E to evaluate and approve such report.

c. If at anytime during the Removal Plan implementation or the facility investigation, a substantial threat to the human health or the environment is discovered, additional interim measures by the Respondent may be necessary. Such interim measures will be taken at the direction of ADPC&E for the purpose of alleviating imminent threats to human health or the environment, subject to the dispute resolution provisions hereof.

#### Facility Investigation

d. Within ninety (90) days following the effective date of this Consent Administrative Order, the Respondent shall submit to ADPC&E a comprehensive facility investigation work plan (the "FIWP"). The facility investigation shall be designed to determine the nature and extent of releases of hazardous substances from regulated units, solid waste management units, and other source areas at the facility, in accordance with the Scope of Work. In addition, the facility investigation shall collect all of the necessary data to develop a corrective measure study in accordance with the Scope of Work.

The facility investigation shall consist of the following tasks:

(1) Description of Current Conditions

- (a) Facility Background
- (b) Nature and Extent of Contamination

(2) FI Workplan Requirements

- (a) Data Collection Quality Assurance Plan
- (b) Data Management Plan
- (c) Health and Safety Plan
- (d) Community Relations Plan

- (3) Facility Investigation
  - (a) Environmental Setting
  - (b) Source Characterization
  - (c) Contaminations Characterization
  - (d) Potential Receptor Identification
- (4) Investigation Analysis
  - (a) Data Analysis
  - (b) Protection Standards
- (5) Identification and Development of the Corrective Measure Alternative or Alternatives
  - (a) Description of Current Situation
  - (b) Establishment of Corrective Action Objectives
  - (c) Laboratory and Bench-Scale Study
  - (d) Screening of Corrective Measures Technologies
  - (e) Identification of the Corrective Measures Alternative or Alternatives
- (6) Evaluation of the Corrective Measure Alternative(s)
  - (a) Technical/Environmental/Human/Health Institutional
  - (b) Cost Estimate
- (7) Justification and Recommendation of the Corrective Measure or Measures
  - (a) Technical
  - (b) Human Health
  - (c) Environmental
- (8) Reports
  - (a) Preliminary and Workplan
  - (b) Progress
  - (c) Draft and Final
- e. Upon ADPC&E review and approval of the FIWP, such approved FIWP will become part of this Consent Administrative Order and shall be implemented by the Respondent in the manner and in accordance with the schedule contained in the FIWP.
- f. Upon ADPC&E approval of all work to be completed under the Scope of Work and approval of the final

corrective measures report submitted by Respondent hereunder, ADPC&E will select a corrective measure alternative(s) following public notice and opportunity for comment.

- g. Respondent shall begin implementation of the corrective measure(s) selected pursuant to paragraph f (above) within sixty (60) days of notice from ADPC&E of the selected corrective measure(s).
- h. ADPC&E and the Respondent recognize that circumstances may arise for which there are no provisions in the facility investigation work plan. Such circumstances may make necessary deviation from the approved plans. ADPC&E and the Respondent agree to negotiate in such instances to resolve any matters that may arise.
- i. ADPC&E shall use its best effort to review all submittals made by the Respondent within thirty (30) days of receipt and shall notify the Respondent by the 30th day of its approval or disapproval of the submittal or its need for additional review time. In the event of disapproval of any submittal, ADPC&E shall at the same time specify in writing the reasonable basis for such disapproval and, if additional investigation or other work is required, a reasonable time schedule for completion. Subject to the dispute resolution provisions hereof, the Respondent shall undertake such additional activities or otherwise respond as required by this paragraph and, if appropriate, shall submit a revised report within any reasonable time specified by ADPC&E.
- j. ADPC&E and the Respondent hereby designate respective project coordinators who shall be responsible for overseeing the implementation of the Consent Administrative Order. The parties' respective project coordinators shall communicate on all technical issues which arise under this Consent Administrative Order and shall be empowered, by agreement, to authorize minor field modifications in the Removal Plan referred to herein and to agree on minor modifications in the implementation of any of the tasks described in the Scope of Work attached hereto when such modifications are deemed by the parties to further the purposes of this

Consent Administrative Order. The parties' respective project coordinators may be changed by either party upon notice to the other party in writing.

The initial project coordinators shall be:

For ADPC&E:

Enforcement Branch Manager  
Hazardous Waste Division  
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND  
ECOLOGY  
8001 National Drive  
Little Rock, Arkansas 72219

For Respondent:

Mr. John Wagner  
Environmental Engineer  
Cedar Chemical Corporation  
West Helena Plant  
Highway 242  
West Helena, Arkansas 72390

The parties' respective coordinators shall have the authority by written agreement, to make or authorize minor filed modifications in the Facility Investigation Work Plan or in techniques, procedures or designs used to carry out the Facility Investigation Work Plan which are necessary to the completion of this project.

- k. All correspondence, reports, plans and other writings required under the terms of this Consent Administrative Order to ADPC&E shall be sent to the following:

Enforcement Branch Manager  
Hazardous Waste Division  
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND  
ECOLOGY  
8001 National Drive  
Little Rock, Arkansas 72219

cc: Ms. Pat Crossley  
ARKANSAS DEPARTMENT OF POLLUTION CONTROL  
AND ECOLOGY  
8001 National Drive  
Little Rock, Arkansas 72219



All correspondence, reports, work plans and other writings required under the terms of this Consent Administrative Order to Respondent shall be sent to the following:

Mr. John Wagner  
Environmental Engineer  
Cedar Chemical Corporation  
West Helena Plant  
Highway 242  
West Helena, Arkansas 72390

cc: Allen T. Malone  
Apperson, Crump, Duzane & Maxwell  
2110 One Commerce Square  
Memphis, Tennessee 38103

1. Either party may designate additional representatives for purposes of receiving such notices.

#### TRADE SECRETS

11. The terms and provisions of this Consent Administrative Order shall not be interpreted or construed as a waiver of any rights which Respondent may have to restrict access to trade secrets for which a valid claim has been submitted and approved under the provisions of Section 6 of the Arkansas Hazardous Waste Management Code.

#### ACCESS TO THE SITE

12. During the term of this Consent Administrative Order, ADPC&E and its employees, contractors and duly authorized representatives shall be granted access to the Site at reasonable times. Nothing in this Consent Administrative Order shall be construed as restricting the inspection or access authority of ADPC&E under applicable state law.

#### APPLICABLE LAW

13. All actions required to be taken pursuant to this Consent Administrative Order shall be undertaken in accordance with the requirements of all applicable, relevant and appropriate local, state and federal laws and regulations.

#### RECORD PRESERVATION

14. The Respondent shall preserve during the term of this Consent Administrative Order and for a minimum of seven (7)

years thereafter all records and documents in its possession or in the possession of its divisions, employees, agents, accountants or contractors which relate in any way to the Site or work performed pursuant to this Consent Administrative Order, notwithstanding any document retention policy to the contrary.

#### RESOLUTION OF DISPUTES

15. As to any submittal plan, report or schedule required hereunder, for which ADPC&E has provided the Respondent a notice of disapproval, Respondent shall either, within such reasonable time period as is provided by ADPC&E for response to such notice of disapproval, modify and resubmit to ADPC&E such submittal, or alternatively, Respondent shall notify ADPC&E of its disagreement with such disapproval whereupon the parties shall use their best efforts to resolve all disputes or differences of opinion informally and in good faith. If such disagreement cannot be resolved informally, the Respondent shall be entitled to invoke dispute resolution provisions contained hereinbelow.

16. If the Respondent disagrees in whole or in part with any decision or directive of ADPC&E, the Respondent shall promptly notify ADPC&E in writing of its objections and each ground therefor. Such notice shall set forth the specific points in dispute; the position that the Respondent asserts should be adopted as consistent with the requirements of this Consent Administrative Order; the grounds for the Respondent's position; and any other facts which it desires ADPC&E to consider.

17. The parties shall have a period of thirty (30) calendar days after ADPC&E's written receipt of the Respondent's written objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by the representatives of each settling party and incorporated herein by reference.

18. If the parties are unable to reach an agreement within thirty (30) calendar days after ADPC&E's receipt of Respondent's written objections, ADPC&E, acting through its project coordinator, shall provide to Respondent within thirty (30) calendar days its written decision on the dispute. ADPC&E's project coordinator's decision shall control unless Respondent files a petition for resolution of the dispute with the Director of ADPC&E within fifteen (15) days of receipt of the ADPC&E project coordinator's decision. If such a petition is filed, the dispute shall be resolved by a proceeding before an Administrative Law Judge in accordance with the applicable Arkansas law.

### SUBSEQUENT MODIFICATION OR AMENDMENT

19. This Consent Administrative Order may be amended or modified in any respect, including the addition of one or more additional respondents, by mutual agreement of ADPC&E and the Respondent. Such amendments or modifications shall be in writing and shall have as their effective date the date on which such amendments or modifications are assigned by ADPC&E and the Respondent.

### RESERVATION OF RIGHTS

20. Nothing in this Consent Administrative Order shall constitute or be construed as a release by ADPC&E or Respondent of any claim, cause of action or demand in law or equity against any party not a signatory to this document for any liability relating to the Site arising out of the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, pollutants or contaminants.

### DELAY IN PERFORMANCE

21. If any event occurs which causes delay in the performance of the tasks required by this Consent Administrative Order, the Respondent shall have the burden of demonstrating that the delay was caused by circumstances beyond its control. The Respondent shall promptly notify ADPC&E orally and within seven (7) calendar days following oral notification to ADPC&E, notify ADPC&E in writing of any event or circumstance which it reasonably believes will delay its performance hereunder, including the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay and the time table by which the Respondent intends to implement such measures. Any delay in performance occasioned by such events or circumstances beyond Respondent's reasonable control shall extend deadlines hereunder which are affected thereby for so long as such event or circumstance continues to prevent the Respondent's performance.

### CONTRIBUTION PROTECTION

22. The parties represent and agree that this Consent Administrative Order was negotiated in good faith. The Respondent, solely for the purpose of complying with this Consent Administrative Order, as it may be amended by mutual agreement, intends to assume responsibility for work exceeding the Respondent's equitable share. To that extent, the Respondent intends to seek contribution from responsible parties not entering into this Consent Administrative Order pursuant to ARATFA §8-7-520 or other applicable law. The parties agree that such right of contribution is an important aspect of this Consent Administrative Order.

COVENANT NOT TO SUE

23. Except as otherwise reserved herein, upon termination of this Consent Administrative Order, the ADPC&E covenants not to bring any civil, judicial or administrative action under any federal or state statute or the common law against the Respondent for any claim or cause of action arising from or related to the activities which are the subject of this Order, or for response costs incurred by ADPC&E which are within the scope of matters covered by this Order, or for natural resource damages.

EFFECTIVE DATE

24. This Consent Administrative Order shall become effective upon Respondent's receipt of a fully executed copy thereof.

IT IS SO AGREED AND ORDERED.

DATE: July 8, 1991

CEDAR CHEMICAL CORPORATION

By: Elgene Peane Jr., Plant Manager  
RESPONDENT

DATE: 7/11/91

Randall Mathis  
DIRECTOR, ARKANSAS DEPARTMENT OF  
POLLUTION CONTROL & ECOLOGY